KABC010196362020

C.R.P.67 Govt. of Karnataka

Form No.9 (Civil) Title Sheet for Judgments in Suits (R.P.91)

TITLE SHEET FOR JUDGMENTS IN SUITS

IN THE COURT OF THE XL ADDL. CITY CIVIL & SESSIONS JUDGE AT BENGALURU CITY : (CCH-41)

::Present::

Smt. Veena N., B.A.L. L.L.B.,
XL Addl. City Civil & Sessions Judge,
Bengaluru City.

Dated this **20th** day of **November, 2025.**

O.S. No.5482/2020

PLAINTIFF	::	Mr. Arun Kumar Rao, S/o. Late. Dr. K.U.Hari Rao, Aged about 61 years, Flat No. is SH-1303, Purva Seasons, Kaggadasapura Main Road, C.V.Raman Nagar, Bengaluru – 560 093.
		(By Sri. Shainy K.D., Advocate)
	V/s.	

DEFENDANTS	::	1. Board of Managers, M/s. Purva Seasons Owners Association, Represented by its President, Mrs. Chandrani Sarangi, Flat No. SE-804, Purva Seasons, Kaggadasapura Main Road, Nagavarapalya, C.V.Raman Nagar, Bengaluru – 560 093.
	::	2. Mr. Sourabh Srivastava, Secretary Board of Managers, M/s. Purva Seasons Owners Association, Flat No.SC-1406, Purva Seasons, Kaggadasapura Main Road, Nagavarapalya, C.V.Raman Nagar, Bengaluru – 560 093.
	::	3. Mrs. Harsha Dhanani, Former Treasurer, M/s. Purva Seasons Owners Association, Flat No. SB-803, Purva Seasons, Kaggadasapura Main Road, Nagavarapalya, C.V.Raman Nagar, Bengaluru – 560 093.
	::	4. Purva Seasons Owners Association, Association Room, Ground Floor, SG Block, Purva Seasons, Kaggadasapura Main Road, Nagavarapalya, C.V.Raman Nagar, Bengaluru – 560 093.
		(By Sri. Pradeep Kumar P.D., Adv. for D-1 & 4) (By Sri. Harikrishna Pramod, Adv. for D-2 & 3)

Date of Institution of the Suit	::	06-11-2020
Nature of the Suit	::	DECLARATION

Date of commencement of recording of evidence	::	24-01-2025
Date on which the Judgment was pronounced	::	20-11-2025
Total Duration	::	Year/s 05 Month/s 00 Day/s 14

(VEENA N.)
XL Addl. City Civil & Sessions Judge,
Bengaluru City.

J U D G M E N T

Suit is one for declaration that the resolution dated 25.07.2020 and the invoice generated by defendants No.1 to 4 for the period from May 2020 to December 2020 towards maintenance charges are null and void and not binding on the plaintiff and also to declare that the defendants have no right to claim maintenance from owners based on the area of flat and that maintenance should be charged pro rata equal per flat basis from all

the owners in respect of maintenance charges for amenities, facilities, infrastructures and services and to direct the defendants to fix the maintenance charges on an equal per flat basis and for consequential relief of permanent injunction to restrain the defendants from discontinuing the electricity and other basic services to the plaintiff and to disqualify the defendants No.1 to 3 from holding any position of office in the association for a period of 5 years and to restrain the defendants from charging to or recovering from the common maintenance fund from all owners for the purpose of defending this suit.

2. Case of the plaintiff in brief is as hereunder:-

The plaintiff is the joint owner of Flat No.SH-1303 at Purva Seasons situated at Kaggadasapura Main Road, Nagavarapalya, C.V.Raman Nagar, Bengaluru. The said Purva Seasons Apartment Complex consists of

8 tower blocks (SA to SH) with 660 flats, basement and a club house, in which the flat of the plaintiff is situated. It is stated that the apartment complex was constructed in the property bearing Municipal No.92, which comprised of lands bearing earlier Sy. No.98, 99/1, 99/2, 100, 101/1, 101/2, 101/3, 101/4, 101/5, 101/6, 101/7, 101/8, 102, 103, 104, 126 & 127 all situated at Benniganahalli Village, Krishnarajapuram Hobli, Bengaluru South Taluk and presently in Bengaluru East Taluk, Kaggadasapura Main Road, Nagavarapalya, C.V.Raman Nagar, Bengaluru, having a built up area 1523 sq. ft. and proportionate common area of 457 sq. ft. along with one covered car parking facility and the same was purchased by the plaintiff under registered Sale Deed dated 11.10.2018. As per the terms of the sale deed, which was signed by the land owners with the developer, the plaint schedule property is subject to the provisions of the Karnataka Apartment Ownership Act, 1972 and deed

of declaration was registered on 11.07.2017 and as per the terms of the deed of declaration all the flat owners shall become members of Poorva Seasons Owners Association and they shall be governed by the rules and regulations attached to the deed of declaration.

3. The defendants No.1 and 2 are the President and Secretary of the Board of Managers of the Association and defendant No.3 is the Ex-treasurer whose resignation is yet to be ratified by the General Body of Association. It is stated that even though the association was formed, the maintenance of the premises and the essential services were being provided by the developer M/s. Purvankara Limited, with a management fee of 15% of the costs and the costs were charged to an advance maintenance fund collected by the developer from each owner at the time of registration of their respective flats. It is stated that the developer

M/s. Purvankara Limited informed that they were in the process of handing over the maintenance of the apartment complex to the association and subsequently, the Board of Managers called Extraordinary General Body Meeting on 12.01.2020 and submitted 6 models for calculation of common maintenance charges and option 2 of charging the common maintenance charges was approved by majority vote of the General Body of owners and the selection of the second option was documented in the minutes of the meeting vide resolution No.9/2020. Later, the owners who had not attended the Extraordinary General Body Meeting started creating problems regarding fixing of maintenance charges and thereby created a hostile atmosphere which forced 5 members of the Board of Managers to resign. Subsequently, an Extraordinary General Body Meeting was held on 09.02.2020 and the resignation of the members were ratified and the Board of Managers stood

resolved. It was further decided that till election of a new Board of Managers, they shall continue in office. Later, elections were held on 23.02.2020 and defendants No.1 to 3 were elected unopposed. The association is defined in terms of the bye-laws as association of all the apartment owners constituted by such owners or their proxy or Power of Attorney holder, for the purpose of the maintenance, security of the building and all its common amenities, facilities and equipments and for the purpose of protecting legitimate rights and privileges of the owners and generally safeguarding their interests by all lawful means. It is stated that the developer had informed association that they would clear vendor invoices upto 31.03.2020 and this being the situation the Board of Managers should ideally had prepared and sent invoices for the maintenance due from each flat for the payment of common maintenance charges in accordance with the common maintenance charges

model approved vide resolution No.9/2020 dated 12.01.2020. The apartment complex is provided with various amenities. As per clause No.39 of chapter VI of bye-law the owners are obliged to pay in advance annual assessments imposed by the association to meet all expenses relating to the maintenance of buildings. However, the bye-law is silent on the charges to be imposed for the usage of the amenities, facility and infrastructure. The usage of the amenities is not subject to pro rata basis i.e. it is not in accordance with the size of the flat and all the owners irrespective of their undivided share, are permitted an equal usage of the common amenities. The developer has issued an equal number of access and identity cards to each flat owner irrespective of size of their flat. As per the email dated 27.02.2020 sent by defendant No.2, the plaintiff paid an amount of Rs.20,000/- in good faith and vide email dated 31.03.2020 it was confirmed that 447 flat owners have

paid the amount of Rs.20,000/-. Inspite of the final resolution No.9/2020 dated 12.01.2020, the defendant No.3 without any reason or logic, constituted a finance task force to review the common maintenance charges model and communicated to the owners vide email dated 06.03.2020 that the common maintenance charges adopted resolution No.9/2020 was already imposed and operating and calling for a task force is void. It is stated that several owners including the plaintiff suggested to the Body of Meeting to conduct a virtual Extraordinary General Body Meeting and it was not heeded by the defendants on flimsy reasons. The defendants took arbitrary decision, without conducting General Body Meeting and bypassing a resolution already passed dated 12.01.2020. The act of the defendants have created great mental agony and has caused wrongful loss to the owners. The defendants No.1 to 3 have taken arbitrary decisions and demanded money from the

owners and it was the intention of the defendants to favour the interest of the owners of flats of smaller dimensions, as they would not be having sufficient income to pay the charges fixed by the association. It is the contention of plaintiff that it would be totally unfair to the owners of larger flats to bear the expenses incurred by the owners of smaller flats. The plaintiff and the other owners on several occasions requested the defendants to fix the maintenance charge, but the defendants ignored the request. The apartment complex is constructed with smaller and larger built up flats. All the occupants are using the common area amenities, facilities, infrastructure and services without any differentiation or discrimination with respect to the size of their flat. These facilities are extended to all occupants of flats irrespective of occupants of larger flats or smaller flats. After several emails and requests, the defendant No.2 called for a virtual Extraordinary General Body

Meeting through which they proposed to hold on 25.07.2020 and had sent a letter to the registrar of Co-operative Societies informing him about the online polling. Though the association is formed under the act by filing the relevant Form C, the action of defendant No.1 claiming she had intimated the Registrar about the virtual Extraordinary General Body Meeting and subsequent online voting holds no value. Since the association is not registered, the Registrar of Co-operative Societies is not the competent authority. The defendant No.1 was unable to produce any document to show the Registrar has given permission to conduct a virtual Extraordinary General Body Meeting and permitted online voting. The defendant No.2 created much confusion about the manner of casting of votes online. However, the apartment management software was not capable of allowing multiple votes. Consequently, the owners casted their votes through

email. The defendant No.2 sent another email creating further confusion by suggesting a manner of eliminating the common maintenance charge models proposed by various voters. In the virtual Extraordinary General Body Meeting, the selected model was based on the principle that the common maintenance and expenses shall be divided in the proportion of the common areas comprised in the land and the built up areas of the apartment complex and thereby representing 25.95% of common areas and 74.05% of private areas and the maintenance cost were sought to be divided to the extent of 25.95% equally amongst all owners and 74.05% in the ratio of super built up area of the respective flats to the total super built up area of the apartment complex. It is stated that the settled legal position requires 100% of the common maintenance costs to be divided equally amongst all flats and not 25.95% as sought above. The 25.95% appears to be a regrettable ploy by all

defendants to misdirect the owners into believing that the settled legal position has been adhered to.

4. The proposal of common maintenance charges models were posted for voting online during the virtual Extraordinary General Body Meeting and due to technical issues some owners were allowed to vote by email. Based on the selected model of charging common maintenance cost, a proposal for maintenance selection was decided and the amendment of bye-laws was sought. The defendants did not reply to the emails submitted by several owners about the process followed in the virtual Extraordinary General Body Meeting. The defendant No.2 vide email dated 05.10.2020 communicated to the owners about the proposed amendment to the bye-laws pursuant to the changes in the mechanism of charging common maintenance charges has decided in the virtual Extraordinary General

Body Meeting dated 25.07.2020. It is stated that he as an owner brought to the attention of the defendants vide his email dated 5th October, 2020 that the proposed amendment to the bye-laws was flawed as it refers to the area of 10,82,299 sq. ft. as the built-up area of the apartment complex when in reality, it is the super-built-up areas. This has been clearly stated in clause 15, page 9 of the DOD as well. This clause states that the built-up area of the apartment complex is 8,32,453 sq. ft. and the common areas is 2,49,846 sq. ft. that owner also informed the defendants that pursuant to the correction of this anomaly, the common areas in the apartment complex stood at 6,29,193 sq. ft. representing 43.05% of the total area comprised in the land and super-built-up area of the apartment complex. That same owner had subsequent sent another email dated 06th October 2020 in response to an email from one of the owners, also copying the defendants, stating his objections to this

model “not being aligned with judicial rulings”, “lacking a robust logic” and the implications of his email dated 05th October, 2020. It is stated that all the amenities, facilities, infrastructure and services are enjoyed by all the owners equally and there was no reason for the association to make the owners to pay more on the basis of the area of their flat. As such, the resolution passed at virtual Extraordinary General Body Meeting on 25.07.2020 is null and void. The plaintiff caused legal notice citing all these reasons against defendants No.1 to 3 and though the legal notice is served, the same was not responded by them. Hence, the virtual Extraordinary General Body Meeting dated 25.07.2020 and invoices raised by the defendants based on the common maintenance charges adopted in the said virtual Extraordinary General Body Meeting is null and void and is not binding upon the plaintiff. The defendants are continuously putting pressure upon the plaintiff to accept the common

maintenance charges model under threatening to defame the plaintiff and are unilaterally imposing penalty in the form of interest on the invoiced amount at the rate of 18% p.a. and the plaintiff has paid the maintenance amount under protest. Further, the defendant No.2 has proposed for amendment of the bye-law in accordance with the resolution passed on 25.07.2020 and if the amendment is made in the bye-law it would cause great hardship and loss to the plaintiff and since the efforts made by the plaintiff to arrive at an amicable settlement turned futile and since the plaintiff was unable to resist the illegal acts of the defendants, left with no choice the present suit is filed.

5. In pursuance to the summons issued the defendants No.1 to 4 caused appearance through their counsel. However, during the pendency of the suit as per the memo filed by the plaintiff, suit against defendants

No.2 and 3 is dismissed as not pressed vide order dated 22.04.2025. The defendants No.1 and 4 in their written statement have contended that suit is filed by suppressing key facts and hence, it deserves to be dismissed upon exemplary cost. The plaintiff is guilty of suppressio veri suggestio falsi and has suppressed the key minutes and emails which are fatal to his case. The present suit has been filed by the plaintiff in his individual capacity and seeks to implement a maintenance model for the calculation, collection and payment of the maintenance which has explicitly been rejected by the General Body. The plaintiff's attempt to force his opinion on an association comprising of 660 members without any logic or legal validity is a gross abuse of the process of law and the democratic manner in which the defendant No.4 association functions. It is stated that the defendant No.4 Purva Seasons Owners Association is an association which is formed under the Karnataka

Apartment Ownership Act, 1972 vide Deed of Declaration and Bye-laws dated 10.07.2017. As per the terms of the deed of declaration, the management of upkeep, maintenance and repair of the common facilities and amenities including services to the members of the Association stands vested with the defendant No.4 association. The defendant No.4 association operates under the ambit of the bye-laws which is part of the deed of declaration. The bye-laws of the defendant No.4 association demonstrates that all owners of the apartments in the Purva Seasons Condominium become the members of defendant No.4 association and the decisions are taken by the General Body Association which includes decisions regarding the modality for collection of maintenance towards the common areas, amenities and facilities which is provided by the association to all members. The deed of declaration and bye-laws were executed and registered by the developer

stipulates that the charges towards maintenance would be based on the square footage of the apartment which is incorporated in clause 39.1 of the bye-laws. As per the said clause every apartment owner was required to pay a fixed amount based on the total square footage of the apartment. It is stated that on the completion of the term of the Board of Managers elected on 16.12.2018, elections were called for and a new Board of Managers was appointed on 15.12.2019. The then Board of Managers which was appointed, in its wisdom, sought to amend clause 39.1 of the bye-laws which provided for a square feet based model for the calculation of maintenance charges and sought to adopt a hybrid model for the computation of maintenance. The Board of Managers accordingly called for a General Body Meeting vide notice dated 26.12.2019 and the meeting was held on 12.01.2020. In the said General Body Meeting, six models were presented by the Board of Managers as

alternates to the square feet based model including the then existing square feet model. Thereafter, the General Body decided to adopt a hybrid model in place of the square feet based model. Option 2, presented in the meeting dated 12.01.2020 provided for the concept of a hybrid model to be adopted, with some charges being borne by the flat owners on the basis of the square footage and some borne on the basis of total number of flats in the apartment complex. This came to be recorded in resolution No.9/2020 in the Minutes of the Meeting dated 12.01.2020. It is pertinent to note that, the plaintiff who was present at the said meeting, neither opposed the passing of Resolution No.9/2020 nor did he raise any objection that the same was not in line with the model which is purportedly sought to be implemented in the present suit. Thereafter, the Secretary circulated email on 25.01.2020 to all the members of the Association about the calculation of the maintenance amounts and

General Body Meeting was also called on 26.01.2020 vide notice dated 17.01.2020. However, the meeting was inconclusive with respect to the agenda and another meeting was called on 01.02.2020 and no minutes were circulated for this meeting and due to various reasons the then Board of Managers resigned enmasse in February 2020 and therefore, emergency General Body Meeting was called vide notice dated 06.02.2020. In the said meeting, the 5 Board of Managers resigned their position and the resignation was ratified and it was resolved that the then President would notify the elections dates as per the bye-laws. It is stated that as per the minutes of meeting dated 12.01.2020 it was recorded that option 2 had been adopted as the maintenance model and the same was under discussion and there was no consensus with respect to the computation which was required to be adopted. In view of lockdown in the year 2020, the developer agreed to

extend its maintenance till 30.04.2020. Further, election was announced in the meeting dated 09.02.2020 and defendant No.1 was elected and since there was consensus regarding the hybrid model that had to be adopted a Finance Task Force was constituted by defendant No.3 for the purpose of designing a hybrid maintenance model for association by calling for suggestions and recommendations from all the residents. The Finance Task Force under took the mandate and presented its shortlisted hybrid models for the consideration of Board of Managers and a model was selected by the Board of Managers for approval of the General Body and the same was communicated to the members on 22.03.2020 and a meeting was convened on 24.03.2020. When the proposed model was under discussion, some section of members insisted that the proposed model which was tabled during the General Body Meeting dated 12.01.2020 be

implemented as per the resolution passed in the meeting. Since there was no clarity with respect to the model, opportunity was given to all members to equally voice their concerns and present to their hybrid model-based proposals. Based on the models, which were received by the Board of Managers a virtual Extraordinary General Body Meeting was scheduled on 25.07.2020 and a vote was called for by the Board of Managers and a majority of a General Body Meeting voted in favour of a virtual meeting and the plaintiff himself was also one of the members who advocated for a virtual Extraordinary General Body Meeting. For the benefit of all the members, copies of the models were circulated and the members also provided clarifications and responded to queries regarding their proposed models for the benefit of all the members and despite being given an opportunity, the plaintiff failed to come forward with any proposed model for consideration of the

General Body. On 25.07.2020 the proposed maintenance models were taken up for consideration and General Body initially voted on the question as to whether bye-laws had to be adopted to adopt a hybrid model and majority of the members voted in favour of amending the bye-laws to adopt a hybrid model for computation of maintenance and the plaintiff was also one such person who voted in favour of amending the bye-laws. It is stated that eight models were presented and the members appraised of the benefits and drawbacks of each model by the proposing members. Thereafter, six models were withdrawn by the proposing members. Based on the remaining models which were considered, the General Body of the defendant No.4 association voted in favour of model No.5 which had been proposed by one Mr. Dhiraj Shetty. The majority vote was taken on record and the model was considered and approved by the General Body. The proposed model

was a hybrid model, as contemplated by the General Body in January 2020 and provided for a breakup of the maintenance costs on the basis of super built up area of the flat and the total number of flats on a proportionate basis.

6. Based on the majority consensus of the General Body, the defendant No.1 also amended the bye-laws vide Rectification Deed dated 30.11.2020. The actions taken by the defendant No.1 as representatives of the defendant No.4 association have been entirely in consonance with the bye-laws and in the spirit of participation of all members of the association. From the foregoing facts, it is clear that the decision to implement the existing model of computation of maintenance was taken pursuant to a General Body Resolution in the Meeting dated 25.07.2020. The plaintiff is attempting to coerce the majority of the Association to revert to a model which was at no point of time approved by the

General Body of the association. It is pertinent to note that the Karnataka Apartment Ownership Act, 1972, under which the defendant No.4 association is registered, provides that the decisions of the General Body are binding on each and every member of the association. Such being the case, the decision of the General Body to adopt a particular maintenance model cannot be challenged by a lone resident on the ground that the same is illegal. In fact, the existing maintenance model is compliant with the bye-laws, Deed of Declaration as well as the Karnataka Apartment Ownership Act, 1972 in terms of its reliance on the proportionate share and rights of owners based on their respective apartment sizes.

7. It is further stated that the plaintiff, on one hand, claims that option 2 was purportedly the final model which was approved by the General Body in the Meeting dated 12.01.2020 and at the same, time, in

prayer (d) seeks an implementation of the maintenance on a per flat basis, which has at no point of time been approved by the General Body. This clearly demonstrates that the plaintiff himself is unsure about the model which he seeks implementation of and the present suit has been filed with the sole intention of creating hostility, animosity and acrimony in the residential complex. The plaintiff has filed the present suit on frivolous grounds and on fictitious grounds and irrelevant considerations and the plaintiff appears to be the sole aggrieved member and is attempting to reverse the majority decision of the defendant No.4 association by misleading this Court and hence, the suit is not maintainable and contending these facts sought for dismissal of suit.

8. Heard learned counsel for the plaintiff and defendant and perused the records.

9. The aforesaid pleadings have occasioned following ;

ISSUES

1. Whether the plaintiff proves that the Resolution passed against Agenda No.5 in extraordinary general body meeting dated 25.07.2020 is null and void and not binding on the plaintiff ?

2. Whether the plaintiff proves that the invoices generated for the period May-2020 to December-2020 by defendant No.1 to 4 are null and void and not binding on the plaintiff ?

3. Whether the plaintiff proves that the maintenance charges should be charged prorate equal per flat basis from the owners in respect of infrastructure and other facilities ?

4. Whether the plaintiff is entitled for the various declaratory reliefs as claimed ?

5. What order or decree ?

10. In order to establish his case, the plaintiff got examined himself as P.W.1 and relied upon 24 documents marked at Ex.P.1 to Ex.P.24 and closed the evidence. Per contra the defendants No.1 and 4 have not chosen to lead evidence.

11. My answers to the above issues are as follows:

ISSUE No.1 :: In the Affirmative.

ISSUE No.2 :: In the Affirmative.

ISSUE No.3 :: In the Affirmative.

ISSUE No.4 :: Partly in the Affirmative.

ISSUE No.5 :: As per final order for the following;

REASONS

12. ISSUES NO.1 TO 4 :: All these issues are taken up collectively for common discussion to avoid repetition of facts and also for convenience of the Court.

The present suit is one for declaration that the resolution dated 25.07.2020 and the invoice generated by defendants No.1 to 4 for the period from May 2020 to December 2020 towards maintenance charges are null and void and not binding on the plaintiff and also to declare that the defendants have no right to claim maintenance from owners based on the area of flat and that maintenance should be charged pro rata equal per flat basis from all the owners in respect of maintenance charges for amenities, facilities, infrastructures and services and to direct the defendants to fix the maintenance charges on an equal per flat basis and for consequential relief of permanent injunction to restrain the defendants from discontinuing the electricity and

other basic services to the plaintiff and to disqualify the defendants No.1 to 3 from holding any position of office in the association for a period of 5 years and to restrain the defendants from charging to or recovering from the common maintenance fund from all owners for the purpose of defending this suit.

13. In the instant suit, the undisputed facts which are evident from the pleading and Ex.P.1 sale deed dated 11.10.2018, that the plaintiff is the joint owner of Flat No.SH-1303, Purva Seasons, Kaggadasapura Main Road, Nagavarapalya, C.V.Raman Nagar, Bengaluru, along with his wife under registered Sale Deed dated 11.10.2018 having a built up area 1523 sq. ft. and proportionate common area of 457 sq. ft. along with one covered car parking facility and this area is inclusive of balconies and utility space and common areas

attributable thereto and the said property was purchased by the plaintiff along with his wife from M/s. Puravankara Ltd.

14. It is also not in dispute that as per the terms of sale deed, the plaintiff being the owner of the flat joined the Poorva Seasons Owners' Association formed under deed of declaration which was signed by the land owners with the developer wherein they had subjected the plaint schedule property to the provisions of Karnataka Apartment Partnership Act, 1972 which is marked as Ex.P.2. The said document shows that in terms of deed of declaration all the flat owners become members of Purva Seasons Owners' Association and they shall be governed by the rules and regulations attached to the said deed.

15. Further Ex.P.3 makes it clear that the plaintiff has signed form-B declaration stating that he would

abide by the bye-laws framed and registered under the Act and the said form-B declaration has been included in the sale deed as clause in terms of Sec.3(2) of the Karnataka Apartment Ownership Act, 1972. It is also not in dispute that the defendants No.1 and 2 are the President and Secretary in the Board of Managers of the Association and defendant No.3 is the Ex-Treasurer. Further there is also no serious dispute that even though association was formed the maintenance of the premises and essential services were being provided by the developer, M/s. Puravankara Ltd. with a management fee of 15% of the costs and the costs were charged to an advance maintenance fund collected by the developer from each owner at the time registration of their respective flats.

16. Learned counsel for the plaintiff in his arguments submits that the apartment complex is

constructed with smaller and larger built-up flats, however, the occupants are using the common area amenities, facilities, infrastructure and services equally, without any differentiation or discrimination with respect to the size of their flat and these amenities, facilities, infrastructures and services are extended to all occupants of flats equally, irrespective of occupants of larger built-up area flats or smaller built-up area flats. It is submitted that it is not the number of occupants of the flat or the built-up area that will decide the usage of the common area facility with precise utilization. The plaintiff had several times intimated the same to the defendants but they paid no heed to his words and proceeded in raising an invoice in accordance with the personal choice of Harsha Dhanani, by abusing her official capacity as the Treasurer of the Association.

17. Further it is submitted that in the said virtual EGBM, the defendants proposed the common

maintenance charges to be collected based on the models presented by certain owners and finally, two common maintenance charges collection models were put forward for online voting and a model was selected there from. The selected model was based on the principle that the common maintenance and expenses shall be divided in the proportion of common areas comprised in the land (3,79,346 sq. ft.) and the built-up areas of the apartment complex (10,82,299 sq. ft.) (the area of 10,82,299 sq. ft. being erroneously termed as built-up area by the author of this common maintenance charges model) thereby representing 25.95% of common areas and 74.05% of private areas owned by individual owners. It is further submitted that the amenities, facilities, infrastructure and services are enjoyed by all owners equally and therefore, there was no reason for the association to make the owners to pay more on the basis of the area of their flat. There is absolutely no

rationale or any reason to require the larger flat owners to pay more for the aforesaid amenities, facilities, infrastructure and services on the basis of the size of the flats. It is further submitted that maintenance charges are to be assessed and fixed by the association on a pro rata equal per flat basis and not on the basis of the actual super built-up area of the flat occupied by the owners and common areas are used by the owners occupied by large sq. ft. built-up area as well as small sq. ft. built-up area alike and for usage of common areas, there cannot be any differential treatment based on the built-up area of the flat each owner possesses.

18. In support of his arguments the Learned counsel for the plaintiff has relied upon the judgment, in case of **Venus Co-operative Housing Society and Others V/s. J.Y.Detwani and Others** reported in **2003 (3) All. M.R.570** Wherein it is held by Hon'ble Court as hereunder:

It cannot be said that the big flat holders are getting higher or more services to make them liable to pay more on the basis of the area of the flat. Aforesaid services are enjoyed by all the members equally and therefore, there was no reason for the society to have made the large flat holders to pay more on the basis of the area of the flat. There is absolutely no rational or any reason to require the large flat owners to pay more for the aforesaid service charges. The supremacy of the general body cannot be disputed but even the supreme general body has to be reasonable and has to pass rational resolution considering all the facts and circumstances of the matter. The general body cannot pass arbitrary and unreasonable resolutions merely because it is supreme and it has a large majority in favour of one of the issues on the agenda.

19. Further reliance is also placed upon the judgment, in case of **West Park Apartment Owners V/s. Ms. Mary Varkey** reported in **S.C. No.700/2013 Wherein it is held by Hon'ble Court as hereunder:**

As per Section 12(2) of Karnataka Apartment Ownership Act, a true copy of every Deed of Apartment shall be filed in the office of the competent authority. But declaration and deeds of apartments shall be registered under the Registration Act before Sub-Registrar where the property situates. The plaintiff has not produced any documents about registration of deed of apartment or declaration as per Sec.13 of Karnataka Apartment Ownership Act. Because the declaration shall be in form 'A' as per Karnataka Apartment Ownership Rules, 1975 and declaration by each apartment owner under Form 'B' which shall be signed by the apartment owner and verified in the presence of a Magistrate or any other person competent to administer oath and shall be filed with the competent authority within 30 days from the date of its execution or within such longer period as the authority may permit.

20. Learned counsel for the plaintiff has also relied upon the judgment, in case of **Ms. Sneha Matam V/s. Balaji Paradise Apartment** reported in **O.S. No.3834/2015**, wherein **Venus Co-operative Housing Society and Others Vs. J.Y.Detwani and Others** reported in **2003 (3) All. M.R.570** was referred and it was also observed that the Association was right in charging maintenance as per flat size at paragraph 32 it was observed that:

> *It is a prudent thinking and also unbiased view to express that when a big apartment building is constructed with smaller and bigger built-up flats, but the occupants will use the common area facilities like electric supply, corridor, maintenance of lift, parking, water supply to all flats, maintenance of generator etc., all flats will be equally, meaning thereby the common area facilities will be extended to all occupants of flat owners irrespective of larger built-up area occupants of the flats and lesser built-up area*

occupants of the flats. It does not need a prudent explanation to be expressed. It is unwise to think that occupation of the flats with lesser built-up area will use common area facilities lesser than the flats occupied by persons with larger built-up area. For example, flat built-up area with 1200 sq. ft. (2 bed room flat) may be occupied by occupants of larger number 2 to 4 or 5, whereas the occupants of the larger built-up area with 1400 sq. ft. (3 bed room flat) may be occupied by only 2 old couples where their children are staying abroad. But, both these families are enjoying the common area facilities like lift, electric supply, facilities of Health Club etc., all those provided by the association commonly and equally. It is not the number of the occupants of the flat persons or built-up area will decide to use the common area facility with precise utilization and it is also unwise to think in that direction.

21. On the contrary L/c. for defendant No.1 in his arguments submits that defendant No.1 is the Board of

Managers and defendant No.4 is the Apartment Association and the Association is registered under the Karnataka Apartment Owners Act and the plaintiff had chosen to proceed only against the aforementioned defendants. It is submitted that the plaintiff is challenging the maintenance model which was approved by the General Body Meeting and therefore, the claim against such decision is not maintainable either in law or merits and the plaintiff is the owner of a three bedroom flat and therefore, is liable to pay maintenance at a higher rate.

22. Having heard the arguments of both counsels and keeping in mind the legal propositions discussed supra, this court proceeds to analyse the evidence placed on record. The plaintiff in order to establish his claim before the Court got examined himself as P.W.1 and he has in his evidence deposed that the Board of Managers had called for an extraordinary general body

meeting on 12.01.2020. During this, six models for calculation of the common maintenance charges were presented by the Board of Managers. Ex.P.4 relied upon by the plaintiff corroborates this contention and it provides that option 2 of charging the common maintenance charges was approved by a majority vote of the general body of owners present. Later some dispute arose among the owners who did not attend the extraordinary general body meeting regarding fixing of maintenance charges etc. and emails were sent, creating a hostile atmosphere which forced the five members of Board of Managers to resign from the committee. Ex.P.5 shows that an extraordinary general body meeting was held on 09.02.2019 and the resignation of Board of Managers was ratified by the general body and thus the Board of Managers stood dissolved. But it was decided that till the election of a new Board of Managers the existing body shall continue in the office. The evidence of

P.W.1 coupled with Ex.P.6 shows that elections were held on 23.02.2020 and defendants No.1 to 3 were elected unanimously. It is stated that as per clause 39 of the by-laws, the owners are obliged to pay in advance annual assessments imposed by the association to meet all expenses relating to the maintenance of the buildings, repairs, day to day outgoings etc. and the assessment shall be made pro rata according to the super Built up area. It is the contention of P.W.1 that the bye-law is silent on the charges to be imposed for the usage of the amenities, facilities and infrastructure as stated above as well as various services provided by the association like security, housekeeping, garbage collection, pest control, facility management, clubhouse management, gardening and landscaping etc. It is stated that the usage of the amenities, facilities and infrastructure is not subject to pro rata basis i.e. it is not in accordance with the size of flat. All owners, irrespective of their undivided share, are

permitted for equal usage of the common amenities, facilities and infrastructure. The developer had issued an equal number of access and identity cards to each flat owner, irrespective of the size of their flat for purposes such as usage of the clubhouse. But few owners claim that they are obliged to pay the maintenance charges based on the square feet of their flat, which was stated in the bye-laws registered under the Karnataka Apartment Owners Act. 1972. It is stated that the defendant No.2 had required all the owners including the defendants No.1 to 3 to make payment of Rs.20,000/- and informed that the said sum would be set aside as a corpus fund of the association to be used only in case of emergency. The plaintiff in good faith paid the amount and the corpus fund so collected aggregates to Rs.89,40,000/-.

23. It is stated that the Board of Managers conducted a virtual extraordinarily general body meeting

to reach a consensus with regard to dispute that arose among the members of the Association in respect of the maintenance collection adopted by the defendants and they took decisions arbitrarily without conducting an extraordinarily general body meeting, by passing the resolution already passed on 12.01.2020, the defendants have failed to comply with the resolution passed dated 12.01.2020 and tried to impose in the form of advance maintenance without following any of the rules and regulations as stipulated under the Act, Rules or Bye-laws. The defendants No.1 to 3 took arbitrary decisions and demanded money from the owners, wherein the plaintiff along with other owners would be financially impacted.

24. Ex.P.8 shows that defendant No.3 has sent email expressing her intention to favour the interest of the owners of flats of smaller dimensions as they would

not be having sufficient income to pay the charges fixed by the association even if it is at the cost of the interest of the owners of flats of larger dimensions. Likewise the emails marked as Ex.P.9 and Ex.P.10 shows that the owners on several occasions requested the defendants to follow the settled legal position while fixing the maintenance charge and also forwarded the judgment of Hon'ble Court. But the defendants ignored the judgment. It is stated that the apartment complex is constructed with smaller and larger built-up flats. The occupants are using the common area amenities, facilities, infrastructures etc. These amenities, facilities, infrastructure and services are extended to all occupants of flats equally irrespective of occupants of larger built-up area flats or smaller built-up area flats. It is not the number of occupants of the flat or smaller built-up area flats that will decide the usage of the common area facility with precise authorization. Finally, as per Ex.P.11,

several emails were sent and the defendant No.2 informed about the online polling on an apartment management software called Apartment Adapt. It is stated that as per the bye-laws and Act, voting in a meeting of a general body can only be physical voting and the same was not adhered to by the defendants in conducting the extraordinary general body meeting. The association is formed under the Act by filing relevant Form C. Therefore, the action of defendant No.1 claiming she had intimated the registrar about virtual extra general body meeting and subsequent online voting holds no value.

25. Further Ex.P.12 to Ex.P.15 are the email correspondences which shows, while email dated 27.02.2020, the defendants informed that online polling cannot be initiated and proceedings of the virtual extra general body meeting should be conducted according to the by-laws.

26. P.W.1 has further stated that much confusion was caused by defendant No.2 preceding the virtual extraordinary general body meeting on the manner of casting of the votes online. As some owners had multiple flats in the apartment complex, they were entitled to one vote for each flat owned by them. But the software was not capable of allowing multiple votes for such owners. Consequently the owners were allowed to cast their votes through email. Later the defendant No.2 sent another mail on 25.07.2020 creating further confusion by suggesting the manner of eliminating the common maintenance charge models. Again as per Ex.P.15, the defendant no. 2 sent another mail to join virtual extra general body meeting. The plaintiff had to continuously check his email inbox for the virtual meeting link every half an hour. In the said Extra ordinary General Body meeting, two common maintenance charges collection models were put forward for online voting and a model

was selected therefrom. The selected model was based on the principle that the common maintenance and expenses shall be divided in the proportion of common areas comprised in the land and built up areas of the apartment complex, being erroneously termed as built-up area. Therefore the common maintenance costs were sought to be divided to the extent of 25.95% equally amongst all owners and 74.05% in the ratio of super built-up area of the respective flat to the total super built-up area of the apartment complex.

27. P.W.1 has further deposed that settled legal position requires 100% of the common maintenance costs to be divided equally among all flats. The 25.95% appears to be a regrettable ploy by all defendants to misdirect the onus into believing the settled legal position has been adhered to. Further Ex.P.16 shows several owners including the plaintiff sought an explanation on

the process followed in the virtual meeting. The defendants did not reply to the emails. Ex.P.17 and Ex.P.18 shows, defendant No.2 has sent mail communicated to the owners and proposed amendment to the by-laws pursuant to the changes in the mechanism of charging the formal maintenance charges.

28. Ex.P.17 to Ex.P.20, which are also the email correspondences between the defendant No.2 and the apartment owner, shows that an owner has brought to the attention of the defendants that the proposed amendment to the by-laws was flawed as it refers to the area of 10,82,299 square feet as the built-up area and the built-up area of the apartment complex is 8,32,453 square feet and the common area is 2,49,846 square feet. It was also informed by the owner that, pursuant to the correction of this anomaly, the common areas in the apartment complex stood at 629,193 square feet,

representing 43.05% of the total area comprised in the land and super built up area of the apartment complex. But the defendants did not respond to any of the emails submitted by the owner. It is the contention of plaintiff that the amenities, facilities, infrastructure and services are enjoyed by all owners equally and therefore there was no reason for the association to make the owners to pay more on the basis of the area of their flat. There is absolutely no rationale or any reason to require the larger flat owners. To pay more for the aforesaid amenities, facilities, infrastructure and services on the basis of the size of their flats. It is stated that the total number of members is 660. The association was formed primarily for providing maintenance of common areas and common amenities. The enjoyment of common amenities, facilities etc. Is irrespective of the area of the flat they possess. The maintenance charges are to be assessed and fixed by the association on a pro rata

equal per flat basis and not on the basis of actual super built-up area. P.W.1 has deposed that the plaintiff also caused notice to defendants No.1 to 3 as per Ex.P.21. It is stated that the virtual extra general body meeting dated 25.07.2020 called by the defendants to adopt common maintenance charges model is not binding upon the plaintiff. The invoices raised by the defendants based on the said resolution is none and void. The plaintiff is not liable to make any payment, against the invoices raised by the defendants based on the common maintenance charges adopted by the defendants. Since the defendants are continuously putting pressure upon the plaintiff to accept the common maintenance charges more than adopted by the defendants, the present suit is filed.

29. At this point of time it is necessary to note that the plaintiff by filing memo got dismissed the suit

against defendants No.2 and 3 as not pressed. During cross-examination of P.W.1 by Learned counsel for defendants No.1 and 4 the suggestion put forth that the plaintiff having already paid Rs.1,14,00,000/- could not raise any objection to the deed of declaration and the current Model is denied and it is admitted that the current model of maintenance charges is adopted by majority of the residents of the apartments. No doubt the deed of declaration relied upon by the defendant makes it clear that the management, upkeep, maintenance and repair of the common facilities and amenities including services to the member of association vested with the defendant No.4 association. The defendant No.4 association operates under the ambit of the bye-laws which forms part of deed of declaration. Further the bye-laws of the defendant No.4 association placed on record also makes it clear that all the owners of the apartments in the purva seasons condominium become members of the

defendant No.4 association. The decisions of the association are taken by the general body of the association which includes decisions regarding the modality for collection of maintenance towards the common areas, amenities, facilities which is being provided by the association to all the members. So far as the expenditure is concerned, clause 39 of the bye-law reads as hereunder:

> *Clause 39. EXPENDITURE ASSESSMENT*
> *39.1 All Owners are obliged to pay in advance, annual assessments imposed by the Association to meet all expenses relating to maintenance of the Buildings, repairs, day to day outgoings, monthly salaries, etc., which may include an insurance premium for a policy to cover repair and reconstruction work in case of hurricane, fire, earthquake or other hazards or calamity. The assessment shall be made pro-rata according to the super built-up area of the Apartment. All such assessments shall be paid in advance within the prescribed time and place, failing which the services rendered by the Association shall be*

forfeited by the defaulting member. Such assessments may also include quarterly payments to a Contingency and/ or Sinking Fund.

30. As per the said bye law, every apartment owner was required to pay fixed amount based on the total square footage of his or her apartment. The plaintiff including all the members of the association have to pay maintenance charges as per the bye- law. It is evident from the documents placed on record that, the apartment complex is constructed with smaller and larger built-up areas and all the occupants are using the common area amenities, facilities, infrastructure and various services, irrespective of the size of the flat. These amenities facilities are extended to all the occupants of flats equally, irrespective of the larger built-up area or the smaller built-up area. So under such circumstances the question that needs to be adjudicated is as to whether the common maintenance charges model adopted by the

defendants based on the size of the area of the flat is illegal. It is necessary to note that as rightly argued by Learned counsel for plaintiff, it cannot be said that the big flat holders are getting more income or more services to make them liable to pay more maintenance charges based on the area of the flat. It is also necessary to take note of the fact that all the services are enjoyed by all the members equally irrespective of the size of their flats and hence there is no rationale behind the decision taken by the defendants that the large flat owners have to pay more maintenance charges. As per the judgment referred supra, it is clearly held that it is unwise to think that occupation of the flats with lesser built-up area will use common area facilities lesser than the flats occupied by persons with larger built-up area. All these facilities are provided by the association commonly and equally and hence all the occupants of the flat when they are using the common area facility they have to pay

maintenance charges equally and it is totally unwise to think that these flat owners with lesser size flats have to pay less maintenance charges. Hence, this Court is of the opinion that the decision of the defendants in passing a resolution against Agenda No.5 dated 25.07.2020 adopting the common maintenance charges model in place of common maintenance charges model adopted by Resolution No.9/2020 dated 12.01.2020 is not sustainable under law and the invoices generated by defendants No.1 to 4 for the period from May 2020 to December 2020 towards common maintenance charges is null and void and that the defendants have no right to claim maintenance from owners in respect of amenities, facilities, infrastructure and services for common enjoyment of all owners based on the area of the flat and that maintenance should be charged pro rata equal per flat basis from all the owners in respect of Maintenance charges for amenities, facilities, infrastructure and

services and it is considered just and proper to direct the defendants to fix the maintenance charges on an equal pro rata basis and to restrain the defendants from taking any coercive steps against the plaintiffs such as discontinuance of electricity and water supply and other basic amenities.

31. Thus in view of the aforesaid discussions, this Court is of opinion that the plaintiff has succeeded in establishing that the resolution passed by the defendants as against agenda No.5 dated 25.07.2020 and the invoices generated by defendants for the period May 2020 to December 2020 is null and void and it is also established that the defendants have no right to claim maintenance from owners based on the area of the flat and that maintenance should be charged on pro rata equal per flat basis from the all owners. Now so far as, the relief sought by the plaintiff that the defendants No.1

to 3 should be disqualified from holding any position of office in the association is concerned, there is nothing forthcoming from evidence to show that the defendants are disqualified from participating in any election or from holding any position office in the association and the relief sought the defendants should be restrained from recovering the common maintenance fund from all owners or by debiting the expenses from the fund or account held with association is not sustainable for the reason that the suit is not filed in the personal capacity of the defendants and it is filed as the office bearers and the controversy involved also is relating to the decision taken by the office bearers and hence, no such reliefs can be granted. Hence, this Court proceeds to answer aforesaid issues No.1 to 3 in the Affirmative and issue No.4 in the Partly in the Affirmative.

32. ISSUE NO.5 :: In view of findings on issues No.1 to 4, this Court proceeds to pass the following;

ORDER

Suit of the plaintiff is decreed in part.

It is hereby declared that the resolution against the agenda No.5 of the virtual EGBM dated 25.07.2020 adopting the common maintenance charges model in place of common maintenance charges model adopted by Resolution No.9/2020 dated 12.01.2020 is null and void not binding on the plaintiff.

It is declared that the invoices generated by defendants No.1 to 4 for the period from May 2020 to December 2020 towards common maintenance charges is null and void not binding on the plaintiff.

It is further declared that the defendants have no right to claim maintenance from owners in respect of amenities, facilities, infrastructure and services for common enjoyment of all owners based on the area of the flat and that maintenance should be charged pro rata equal per flat basis from all the owners in respect of Maintenance charges for amenities, facilities, infrastructure and services.

The defendants No.1 and 4 are hereby directed to fix the maintenance charges on an equal pro rata basis.

Further the defendants No.1 and 4 are restrained from carrying out the proposed amendment and are restrained from taking any coercive steps against the plaintiff's such as discontinuance of electricity and water supply and other basic amenities to the plaintiff, by way of permanent injunction.

Plaintiff shall bear the cost of the suit.

Draw decree accordingly.

(Dictated to the Stenographer, transcribed by her, transcription corrected and then pronounced by me in the open Court on this 20th day of November, 2025).

(VEENA N.)
XL ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU CITY.

ANNEXURE

I. LIST OF WITNESSES EXAMINED ON BEHALF OF:		
(A) PLAINTIFF'S SIDE ::		
P.W.1	::	Mr. Arun Kumar Rao

(B) DEFENDANTS SIDE :: - N I L -		
II. LIST OF DOCUMENTS EXHIBITED ON BEHALF OF:		
(A) PLAINTIFF'S SIDE :		
Ex.P.1	::	Certified copy of sale deed dtd:11.10.2018
Ex.P.2	::	Certified copy of registered deed of declaration dtd:10.07.2017
Ex.P.3	::	Minutes of the general body meeting dtd:09.02.2019
Ex.P.4	::	Minutes of the general body meeting dtd:09.02.2019
Ex.P.5	::	The print out of the email dtd:18.03.2020
Ex.P.6	::	The print out of the email dtd:25.02.2020
Ex.P.7	::	The print out of the email dtd:25.07.2020
Ex.P.8	::	The print out of the letter dtd:17.07.2020
Ex.P.9	::	The print out copy of the emails from page No.151 to 162
Ex.P.10	::	Draft printout copy of amendment of bye-law
Ex.P.11	::	Printout copy of the invoice dtd:05.09.2020
Ex.P.12	::	Draft printout copy of amendment to the bye-laws
Ex.P.13	::	Certificate of U/s. 65B of Evidence Act
Ex.P.14	::	Printout copy of the emails from page Nos.37 to 49

Ex.P.15	::	Printout of the minutes of first general body meeting dtd:12.01.2019
Ex.P.16	::	Printout copy of the emails from page Nos.53 to 63
Ex.P.17	::	Certificate
Ex.P.18	::	Certified copy of W.P. No.511/2021
Ex.P.19	::	Certified copy of statement of objections filed in W.P. No.511/2021
Ex.P.20	::	Office copy of legal notice dtd:13.04.2020
Ex.P.21	::	Email copy dtd:24.02.2020
Ex.P.22	::	Email copy dtd:06.10.2020
Ex.P.23	::	Email copy dtd:13.04.2020
Ex.P.24	::	Email copy dtd:15.10.2020
(B) DEFENDANTS SIDE :: - N I L -		

(VEENA N.)
XL ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU CITY.